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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,049	04/02/2004	Graham Scott	I4060/166544 (IRC253CON)	2258
23370	7590	09/29/2005	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/817,049	<b>Applicant(s)</b> SCOTT ET AL.	
	<b>Examiner</b> Jenna-Leigh Befumo	<b>Art Unit</b> 1771	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 01 September 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

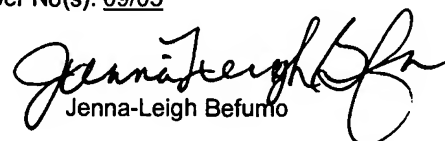
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-27.  
 Claim(s) withdrawn from consideration: 28-37.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
 12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 09/05  
 13. ☒ Other: See Continuation Sheet.

  
 Jenna-Leigh Befumo

Continuation of 5. Applicant's reply has overcome the following rejection(s): The applicant's amendment's to the specification and drawings are sufficient to overcome the objections to the drawings set forth in the previous Office Action. However, the applicant needs to file formal replacement drawings that do not include the markings showing the changes. Additionally, the amendment to the claims are sufficient to overcome the claim objection set forth in the previous Office Action since the applicant has replaced the abbreviation with the entire name of the polymer material.

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments are not sufficient since they are not commensurate in scope with the claims (response, pages 16 - 21). The claims only require a woven fabric with two additional layers below the woven layer, a backing layer followed by a backing fabric. Hence, until the claims further defines the structure of the backing layer this layer only needs to be below the woven fabric layer. The backing layer in the claimed product can be any material or any thickness and it can be any layer in the prior art as long as the prior art teaches there is a woven layer above it and a fabric layer below it, regardless of what the prior art calls it. Thus, the fact that the prior art refers to the corresponding layer by another name, or the fact that the prior art has another layer which is called a stabilizing layer or a backing layer does not exclude the layers from being mapped to the applicant's claimed layers as set forth in the rejection. The coating layer and stabilizing layer of Vinod meet all the limitations recited for the backing layer and backing fabric in the rejected claims. Further, it is noted that the applicant defines the claims using comprising language which means that the additional layers and materials are not excluded by the claims. Thus, different names and combination of layers in the prior art can read on the claimed layers. Additionally, the coating applied to the top layer in Vinod is not excluded by the claims. Nothing in the claim language precludes additional materials in the top layer or using a woven fabric which is coated, treated or covered with an additional material in some way. With regards to Cooney, which discloses that the pile fabric can be produced by weaving, the pile yarns are an integral part of the woven fabric that are formed when the fabric is woven. Since the applicant doesn't limit the structure of the woven fabric in the claims, then any woven fabric, even a multi-layer or pile woven fabric, reads on the claimed product as long as the material is produced by weaving. With regards to Terry, which discloses that the backing layer of the top pile layer is a woven fabric, again it is noted that the claims do not preclude the woven fabric from having any additional material added to it. Hence the pile yarns which are tufted into the woven fabric combine with the woven fabric to form a composite top layer having a woven fabric within the top layer. The claimed structure of the woven fabric or the top layer does not exclude the pile yarns from being added to the woven fabric and forming part of the top layer of the floor covering. With regards to Higgins, this rejection is a separate rejection from the 102 and 103 rejections where Vinod is the primary reference. Thus, the overall floor covering structure is taught by Higgins and Vinod is relied on to teach using a woven fabric instead of a tufted fabric to produce the decorative top surface of a floor covering. This does not mean that the Vinod was interpreted two different ways, but that the backing layer and backing fabric used in this rejection were taught by Higgins and not the layers taught by Vinod. The order of the layers and the structure of the layers disclosed by Vinod were not changed in the either rejection, the only thing done differently in the two rejections was to rename the additional layers of Vinod so that it was clear how they corresponded to the structure recited in the claims. Thus, the rejections are maintained since the additional materials and layers are not excluded by the present claims.

Continuation of 13. Other: The IDS filed on September 1, 2005 has not been considered since the applicant did not include one of the two statements required when an IDS is filed after a final rejection (see 37 CFR 1.97 (d)) .